IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4747 OF 2005

Smt.Hira Shivaji Khalche ..Petitioner.

Vs.

The State of Maharashtra & Ors. ..Respondents.

WITH

WRIT PETITINO NO.4752 OF 2005

Yugaraj Dharmadas Sonawane ..Petitioner.

Vs.

The State of Maharashtra & Ors. ..Respondents.

WITH

WRIT PETITION NO.4755 OF 2005

Mrs.Savita Babulal Vasaikar & anr...Petitioners.

Vs.

The State of Maharashtra & Ors. ..Respondents.

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Mr.N.V.Bandiwadekar for the Petitioners.

Mr.R.D.Rane, Government Pleader for Respondent No.1.

Mr.K.S.Patil for Respondent Nos.2 and 3.

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CORAM : F.I.REBELLO &

DR.D.Y.CHANDRACHUD, JJ.

15th September, 2005.

P.C. :

1. Rule. Heard forthwith.

2. The Petitioners are all candidates who applied as open category candidates. The Petitioners in Writ Petitions 4752 of 2005 and 4755 of 2005 belong to scheduled caste. However, they applied in the open category. They have the necessary qualifications including teaching qualifications to be appointed as Shikshan Sevak. The Petitioners in all the three Petitions came to be appointed as Shikshan Sevak in Respondent No.4 school. Respondent No.2, however, refused approval to the appointment of the Petitioners on the ground that the management has not reserved the backlog and followed the prescribed procedure. Respondent

No.4 thereafter submitted proposals on 5th June, 2004 for approval which were rejected on the ground that there was backlog of reservation as per roster register.

3. The Government, in so far as appointments of Shikshan Sevaks are concerned, have issued administrative instructions on 13th October, 2000. Rule 10(1) of the said Government Resolution reads as under :

> "The Shikshan Sevak shall be selected only as per the Procedure for selection of teachers prescribed under Rule 9 of the Maharashtra Employees of Private Schools, (Conditions of Service) Rules, 1981."

Shri.Laxman Pandit Mali, Education Officer (Secondary), Zilla Parishad, Thane has filed an affidavit. It has therein been set out that Rule 9 of M.E.P.S. Rules 1981 has to be followed while appointing Shikshan Sevak. Thus for the appointment of Shikshan Sevak, the concerned management is required to take into consideration

the provisions of Rule 9 including that the management shall reserve 34% of the total number of posts of the teaching as well as non teaching staff as set out in para 4 of the affidavit. In other words in so far as schools governed by the M.E.P.S. Rules, the percentage of reservation as provided in Rule 34 of the M.E.P.S. Rules has been followed.

4. This Court in so far as Rule 9(7) of the M.E.P.S.Rules is concerned, has passed several judgments, one being in Writ Petition 3571 of 2004 in the case of Pradeep Pandurang Dhondge v. The State of Maharashtra decided on February 25, 2005. This Court noted that reservation ought to be in terms of Rule 9(7) of the M.E.P.S. Rules, which provides for maximum of 34% of reservation. Accordingly, directions were issued that approval be granted based on the reservation provided in Rule 9(7).

5. The appointment of Shikshan Sevak is initially for a period of three years. On completion of the said period of three years, the Shikshan Sevak has to be absorbed as an Assistant Teacher and will be governed by the provisions of

the M.E.P.S. Rules. Therefore, considering the Government Resolution, M.E.P.S. Rules and the affidavit, they will have to be harmoniously construed. If so harmoniously construed, the reservation would be to the extent of 34% only. If not so harmoniously construed then there could be no absorption of Shikshan Sevak as Assistant Teachers in excess of 34%. As noted, the Government in so far as schools are concerned has applied the resolution in terms as provided by Rule 9(7) of the M.E.P.S. Rules. Reservation therefore to the posts of Shikshan Sevak is to the extent of 34 % only.

6. In the light of that, the management is directed to submit a fresh proposal for approval to the Education Officer. The Education Officer to work out the reserved quota at 34%. Accordingly, if there be vacant posts in open category to grant approval to the appointment of the Petitioners, if there be no backlog in reserved category.

7. It is also made clear that the approval would relate back to the date when the management first appointed the Petitioners by following due

process and forwarded the proposals to Respondent No.2. On approval being granted, the period of three years be worked from the date of first appointment and the Petitioners, if approval is granted, would be entitled to be absorbed as Assistant Teachers on completion of three years service. It is also made clear that the honorarium on approval be paid to the Petitioners in terms of the rules.

8. The management has also filed an undertaking to this Court that they would follow the requisite procedure and fulfil the backlog, if there be, as early as possible. The undertaking is accepted.

10. Rule made absolute accordingly. There shall be no order as to costs.

(F.I.REBELLO, J.)

(DR.D.Y.CHANDRACHUD, J.)